

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

O1 Communications, Inc. (U6065C),

Complainant,

vs.

T-Mobile USA, Inc. and T-Mobile West LLC
(U3056C) and MetroPCS California, LLC dba
Metro PCS (U3079C),

Defendants.

Case 15-11-018
(Filed November 30, 2015)**DECISION GRANTING MOTION AND DISMISSING COMPLAINT
WITHOUT PREJUDICE****Summary**

We grant the motion of O1 Communications, Inc. to dismiss this complaint without prejudice.

1. Background of Proceeding

This complaint proceeding was initiated by Complainant O1 Communications, Inc., (U6065C) against Defendants T-Mobile USA, Inc. (T-Mobile USA), T-Mobile West, LLC (U3056C) (T-Mobile West) and MetroPCS California, LLC dba Metro PCS (U3079C) (MetroPCS)¹ on November 30, 2015. This complaint involves a dispute concerning an Interconnection and Traffic

¹ T-Mobile USA, T-Mobile West and Metro PCS will be jointly referred to as T-Mobile for the remainder of this Decision.

Exchange Agreement (ITEA) that O1 Communications and T-Mobile (the Parties) entered into on August 2011. On January 15, 2016, T-Mobile filed its answer to O1 Communications' complaint.

On February 12, 2016, T-Mobile filed a motion requesting that the Commission dismiss O1 Communications' complaint on the premise that the Commission lacks jurisdiction and that pursuant to the ITEA, the Parties are required to take any disputes arising out of the ITEA to arbitration. In its motion to dismiss O1 Communications' complaint, T-Mobile notes that O1 Communications should be bound by the terms of the ITEA agreement and be required to take the matter to arbitration, rather than file a complaint with the Commission.

On February 18, 2016, the assigned Administrative Law Judge (ALJ) issued an e-mail ruling requiring O1 Communications to respond to the question of why O1 Communications failed to comply with the arbitration clause set forth in the ITEA. On February 25, 2016, O1 Communications responded to the ALJ's e-mail ruling by sending an e-mail indicating:

O1 and T-Mobile have agreed to enter into negotiations and then, if needed, arbitration in an attempt to resolve their dispute. Therefore, O1 today filed the attached motion to dismiss its complaint without prejudice. T-Mobile reviewed this motion before filing and authorized O1 to represent that it does not oppose or otherwise intend to respond to the motion.

2. Discussion

On August 2011, the Parties entered into an ITEA. The ITEA clearly states that any disputes arising out of the ITEA will be resolved without litigation. Section S of the ITEA sets forth the procedures that the Parties should follow in the event of a dispute. Section S clearly indicates that in the event of a dispute

the Parties should engage in initial negotiations and mediation for a period of 60 days. Furthermore, Section S notes that if the negotiations are not successful, then the Parties shall submit their dispute to binding arbitration.²

O1 Communications filed this complaint without complying with Section S of the ITEA. In its motion to dismiss O1 Communications' Complaint filed on February 25, 2016, T-Mobile contends that the Commission should dismiss the complaint, because the Commission lacks jurisdiction and that any disputes arising out of the ITEA shall be resolved through arbitration rather than litigation. Shortly after T-Mobile filed its motion requesting that the Commission dismiss the matter for the above-mentioned reasons, O1 Communications filed its motion requesting that the Commission dismiss its complaint without prejudice.³

In its motion to dismiss, O1 Communications notes the following: "O1 Communications and T-Mobile have since agreed that the ITEA dictates the exclusive dispute resolution process for resolving the issues raised in the complaint."⁴ O1 Communications' motion indicates that the Parties have now entered into negotiations and if needed will take the matter to binding arbitration. Therefore, we agree the complaint should be dismissed without prejudice. No public policy would be served by denying O1 Communications' request to dismiss its complaint against T-Mobile.

² See Section S of the ITEA at 10-11.

³ Since O1 Communications has filed this motion seeking dismissal of its complaint, T-Mobile's motion for dismissal is now moot and need not be decided.

⁴ O1 Communications' Motion to Dismiss Complaint Without Prejudice at 1.

3. Safety

Public Utilities (Pub. Util.) Code § 451 requires that every public utility must maintain adequate, efficient, just, and reasonable service to promote the “safety, health, comfort, and convenience of its patrons, employees, and the public.” No party raised any safety-related concerns during the course of this proceeding. We have evaluated the matter and are satisfied that dismissing the complaint does not present any safety-related concerns that need to be addressed.

4. Waiver of Comment Period

This is now an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. O1 Communications and T-Mobile entered into an ITEA on August 2011.
2. Section S of the ITEA requires that any disputes arising out of the ITEA be resolved through binding arbitration.
3. In compliance with Section S of the ITEA, O1 Communications and T-Mobile have decided to resolve their differences through arbitration.
4. O1 Communications requests that this complaint proceeding be dismissed without prejudice.
5. No public policy would be served by denying the motion for dismissal of this complaint.

Conclusions of Law

1. The motion should be granted, and the complaint should be dismissed, without prejudice.
2. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Motion of O1 Communications Inc., requesting dismissal without prejudice of the complaint filed on November 30, 2015, filed against Defendants T-Mobile USA, Inc., T-Mobile West, LLC (U3056C) and MetroPCS California, LLC dba Metro PCS (U3079C) is granted.
2. The complaint filed by O1 Communications on November 30, 2015 is dismissed without prejudice.
3. The hearing determination is changed; no hearings are required.
4. Case Number 15-11-018 is closed.

This order is effective today.

Dated _____, at Sacramento, California.